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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,775	03/30/2001	Robert E. Krall	PROV1100-2	9642

7590

02/03/2004

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SAN DIEGO, CA 92121-2133

EXAMINER

PAK, JOHN D

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 02/03/2004

15

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/823,775

Applicant(s)

KRALL ET AL.

Examiner

JOHN D PAK

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2002 and 05 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 7.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other:

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The terminal disclaimer filed on 11/5/03 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,476,069 has been reviewed and is accepted. The terminal disclaimer has been recorded.

During telephone conversations between Examiner Pak and Attorney Lisa Haile on 12/1/03, it was agreed that the claims would be allowable upon making one change: in claim 3, line 3, delete "sterilized" and insert --- stabilized ---. Ms. Haile authorized an Examiner's Amendment to make the change.

Upon a final review of this REISSUE application, it has come to the Examiner's attention that certain formal issues must still be resolved. This application is in condition for allowance except for the following formal matters:

(1) All references cited in the parent application must be cited again in this application.

(2) All amendments must conform to 37 CFR 1.173 – e.g. show markings based on the original patent claims; use parenthetical information like "twice amended"; and preserve the numbering of patent claims; provide a discussion of status of claims. See 37 CFR 1.173(b)(2), (c), (d), (e), (f), and (g).

(3) *Supplemental* declaration is required since amendments made after the original declaration have not been addressed in a reissue declaration. See MPEP 1414.01 and 1415.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

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New references listed on the attached PTO-892 are cited to further show the state of the art.

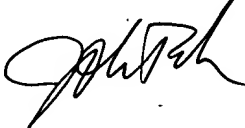
A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is (703)308-4538. **Examiner Pak's telephone number will change on February 3, 2004. Examiner Pak's new number will be (571)272-0620, effective February 3, 2004.** The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Thurman Page, can be reached on (703) 308-2927. Mr. Page's telephone number will change on February 3, 2004. Mr. Page's new number will be (571)272-0602, effective February 3, 2004.

The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1235.

  
**JOHN PAK  
PRIMARY EXAMINER  
GROUP 1600**